

CENTRAL ADMINISTRATIVE TRIBUNAL

CUTTACK BENCH

OA No. 269 of 2019

Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)

Hon'ble Mr. Swarup Kumar Mishra, Member (J)

1. Sri Prabhat Mohanty, aged about 39 years, Son of Pitambar Mohanty, At; Mallikapur, P.O. Sesan, District Kendrapara.

.....Applicant.

VERSUS

1. Union of India, represented through the General Manager, East Coast Railway, Rail Sadan, Chandrasekharpur, P.O: Macheswar, Bhubaneswar, District; Khurda- 751017.

2. Chief Personnel Officer, East Coast Railway, Rail Sadan, Chandrasekharpur, P.O.: Mancheswar, Bhubaneswar, District: Khurda-751017.

3. Seniro Divisional Personnel Officer, East Coast Railway, Office of the Divisional Railway Manager (p), Sambalpur, AT/P.O./Dist: Sambalpur-768002.

4. Medical Director, Central Hospital, East Coast Railway, Macheswar, Bhubaneswar – 751017.

.....Respondents.

For the applicant : Mr. B. P. Dhal, Advocate.

For the respondents: Mr. B. B. Patnaik, Advocate.

Mr. B. K. Sharma, Advocate

Heard & reserved on : 05.10.2020

Order on :09.11.2020

O R D E R

Per Mr. Swarup Kumar Mihsra, Member (J)

The applicant by filing this OA, has prayed for the following reliefs under section 19 of the Administrative Tribunals Act, 1985:-

- (i) *Let it be declared that the speaking order dated 28.03.2019 under Annexure A/10 to the original application is bad in law and same is liable to be quashed; and*
- (ii) *Let the respondents be directed to restore the appointment of the applicant as Goods Guard in terms of his selection and placement by the Railway Recruitment Board or in the alternative respondents be directed to give appointment in the post of Enquiry-cum-Reservation Clerk or any other suitable appointment at part with the post of Goods Guard, with all consequential benefits and including financial emoluments; and*
- (iii) *Let any other of further order/direction may be passed in the facts and circumstances of the case.*
- (iv) *Let the application be allowed with cost.*

2. The case of the applicants as averred in brief in the OA is that he had applied for being recruited as Enquiry-

cu-Reservation clerk against the advertisement dated 26.07.2008 (Annexure A/1) and candidates who had applied earlier were exempted from making any further application as against advertisement dated 13.10.2010 (Annexure A/2). The applicant was given provisional appointment by RRB, Bhubaneswar vide order dated 06.08.2012 after qualifying both joint written test. After the provisional appointment the applicant was asked to go through a medical test and consequently it was informed that the applicant has been found unfit but he was intimated about his right to appeal to Chief Medical Director, East Coast Railway, Bhubaneswar, which he did submit. The vision of the applicant was found perfectly normal by the Medical Board at Central Hospital, Mancheswar and also at LV Prasad Institute Bhubaneswar besides the test at SCB Medical College & Hospital, Cuttack where the applicant got his eye tests done. However, the case of the applicant was referred to medical centre at Garden Reach, Kolkata to rule out any surgical correction of refractory error. The applicant had approached this Tribunal in OA No. 343/2013 where the respondents had submitted that the applicant was found fit at Central Hospital, Mancheswar but to rule out any surgical correction of refractory error, the applicant was sent to the medical centre at Garden Reach, Kolkata whereby it revealed

that the applicant had suppressed the fact of having lasik surgery in both the eyes and therefore on the recommendation of the medical board, the competent authority declared the applicant unfit for the employment as Goods Guard. But since this Tribunal found that the applicant was not communicated with the result of the test conducted at Garden Reach and the decision taken by the competent authority thereon and any scope for the pleadings consequently, the Tribunal in its order dated 28.03.2017 (Annexure A/5) directed the respondents to communicate the decision taken by them along with reasons for decision to applicant within a period of 30 days. The applicant further submitted that in compliance to the aforesaid Tribunal's order the respondent no. 3 by letter dated 26.04.2017 (Annexure A/6) intimated the applicant that he has failed in the medical test which is prerequisite for appointment as Goods Guard and therefore he is not eligible for appointment. The findings of ACHD (Eye)/GRC/Kolkata was to the effect that the applicant was having "BE-Epithelial Scar Mark of Lasik Procedure Flap Present on Cornea" but did not indicate that the applicant is unfit and pertinently. The applicant further submitted that as per the stipulation in the employment notice 02/2010 (Annexure A/2) except for stating that A-2 visual standard signifies that

the distance vision should be 6/9 in respect of both the eyes without glasses, there was nothing to indicate that on account of Lasik Surgery, the candidate would incur disqualification for the post of Goods Guard and since the applicant was selected on merit by the RRB also could have been given alternative appointment, if it is assumed just for the sake of the submission that he was unfit to hold the post of Goods Guard, more particularly when the applicant had applied for being recruited as Enquiry-cum-Reservation Clerk pursuant to joint employment notice dated 26.07.2008 (Annexure 1) and the candidates who had applied for it were exempted from making any further application as against the appointment for advertisement dated 13.02.2010 (Annexure 2). The applicant being aggrieved by the decision of the authorities filed OA No. 426/2017 in this Tribunal contending inter alia that to declare the applicant unfit for the post of Goods Guard is void without any stipulation or bar in the advertisement regarding the lasik surgery and alternatively prayed for any alternative post. This Tribunal vide order dated 13.02.2019 (Annexure A/9) directed the respondents that there is no legal bar or any other impediment in considering the case of the applicant for appointment in the post of Enquiry-cum-Reservation clerk taking into account the medical

certificate already submitted by the applicant within a period of 90 days. The applicant submitted that the respondent no. 3 further examined the matter and intimated the applicant vide letter dated 280.03.2019 (Annexure A/10) that applicant has failed in the medical test, which is the pre-requisite for appointment as Goods Guard in railway and therefore he is not eligible to be appointed and that there is no provision in railway for alternative appointment for a candidate who is declared medically unfit in the requisite category and as per Railway Board order dated 08.06.2009 “the policy of providing alternative appointment to medically failed empanelled candidates both Group ‘C’ and ‘D’ posts should be dispensed with”. The applicant further avers that the adoption of lasik surgery for correction of the vision was taken to be a disqualification for the first time in 2013 under the Railway Medical Manual and policy decision of the Railway taken in the Railway Board’s order dated 08.06.2009 providing alternative appointment to medically failed empanelled candidates both Group C and D posts should be dispensed with without any stipulation incorporated in the advertisement, therefore the same could not have been made applicable in respect of the appointment which was sought to be made earlier and when such a

stipulation was not made there in those advertisement under Annexure 1 & 2. Hence this OA.

3. The respondents in their counter inter alia averred that in the said notice dated 13.02.2010 at Para-8 it was mentioned that “the candidates recommended for appointment will have to pass requisite medical fitness test(S) conducted by the Rly. Administration to ensure that the candidates are medically fit to carry out the duties connected with post. Visually Acuity Standard is one of important criteria of medically fitness of Rly. Staff.” The applicant was selected in the examination for Goods Guard and vide letter dated 20.07.2012 and allotted to Sambalpur Division for further formalities like sending of appointment, verification of testimonials, medical examination, training & posting etc and offer of appointment was issued to applicant vide letter dated 06.08.2012. The applicant accepted and submitted relevant documents on 30.08.2012 for medical examination in A/2 category specified for the post of Goods Guard and in the medical test, he was declared unfit in A/2 category vide letter dated 31.08.2012. The applicant was communicated vide letter dated 06.09.2012 about his unfit and advised the applicant to prefer appeal, which the applicant did and his appeal was considered for re-medical examination and re-medical examination was conducted by Medical

Board at Central Hospital/Macheswar on 17.12.2012 & 03.01.2013 but for examination to rule out lasik surgery, his case was referred to Central Hospital/SER/ Garden Reach/Kolkata who examined him and vide memo dt. 18.02.2013 opined that "BE-EPITHELIAL SCARMARK of LASIK Procedure Flap present on cornea & hence made unfit. Finally on the basis of the Findings of ACHD(eye)/GRC/Kolkaata, the medical Director Central Hospital/BBS vide letter dated 12.03.2013 informed that the applicant is unfit in A/2(Aye-Two) category for the post of Goods Guard (Trainee). Therefore since the applicant has failed in medical test he is not eligible to be appointed as Goods Guard. It is further submitted by the respondents that in compliance to Hon'ble Tribunal order dated 28.03.2017 passed in OA No. 343/2013 filed by the applicant, the respondents vide speaking order dated 26.04.2017 communicated the applicant the decision of the competent authority regarding his medically unfit in A-2 category for the post of Goods Guard (Trainee). The applicant then challenged the order dated 26.04.2017 of the respondents in OA No. 426/2017. The respondents submitted that counter filed in OA No. 426/2017 may be treated as part of this counter and that in compliance to the order dated 13.03.2019 passed by this Tribunal in OA No. 426/2017 the

competent authority vide order dated 28.03.2019 has stated at Para 8 “since you could not pass the requisite medical fitness test, your appointment to the post of Good Guard is not possible. So far as your request for any alternative post is concerned, it is to intimate you that, there is no provision in Railway for alternative appointment for a candidate who is declared medically unfit in the requisite category before appointment in this connection, Railway Board’s orders i.e. RBF No. 90/2009 dated 08.06.2009 clearly stipulates that, the policy of providing alternative appointment to the medically failed empanelled candidates both for Group C and Group D posts should be dispensed with”. The respondents further averred that since the applicant has gone Lasik Surgery earlier and this fact was suppressed, through he being selected on merit due to the defects in his eye and on the basis of the report he could not be appointed in the said post. There is no provision that the applicant once declared unfit has to given alternative appointment in the post of as enquiry cum- reservation clerk in pursuant to joint employment notice no. Dt. 26.07.2008 and the candidates who had applied for, were exempted from making any further application as against the appointments for which the advertisement was made by the employment notice dt. 13.02.2010.

4. List of citations relied by learned counsel for the applicant:

- a) Supreme Court judgment in Secretary, A.P. Public Service Commission vs. B. Swapna & Ors.
- b) Hon'ble High Court of Orissa in Sarthak Builders Pvt. Ltd & another Vs. Orissa Rural Development Corporation Limited & others
- c) Hon'ble High Court of Orissa in M/s Bhusan Steel limited Vs. Paradeep Port Trust & ors reported in 2017 (I0 OLR 159.
- d) Hon'ble High Court of Madhya Pradesh in Union of India & others Vs. Rakesh Kumar Ranjan and Union of India & ors vs. Mukesh Kumar Singh.
- e) Hon'ble High Court of Delhi in Ms. Sreeja K. Vs Union of India & another.

5. In the order dated 30.07.2020 vide Annexure A/9 in the earlier case filed by the applicant, there was no finding given in favour of the applicant that he was medically fit for the purpose of appointment to the post of Goods Guard. The respondents have admitted in their additional counter that the circular dated 11.11.2013 regarding the medical requirement cannot be said to be retrospectively applicable for the recruitment of candidates in pursuance to the advertisement made by Annexure A/2 dated 13.02.2010. The averment made by the applicant that

he had applied in pursuance to the advertisement dated 26.07.2008 vide Annexure A/1 and that in the said advertisement he had also applied for the post of Enquiry-cum-Reservation Clerk has not been specifically denied by the respondents. In the said circumstances learned counsel for the applicant had submitted that the applicant should be appointed as Enquiry-cum- Reservation Clerk but it is seen from the record that the applicant had secured 87.65% mark whereas the mark secured by the last empanelled UR candidate of ECRC post is 94.93% and thereby the applicant was not coming within the zone of consideration in the merit list for appointment to the post of Enquiry-cum- Reservation Clerk. The claim made by the applicant that he should have been given alternative appointment to the said post of Enquiry-cum- Reservation Clerk, in view of the fact that he was found medically unfit for A/2 category required for the purpose for appointment to the post of Goods Guard, cannot be accepted as the respondents in their circular dated 08.06.2009 had specifically mentioned that medically failed candidates cannot get alternative appointment on the ground of medical unfitness. As per the report dated 12.02.2013 the doctor at Garden Reach, Kolkata opined "BE-Epithelial Scar Mark of LASIK procedure Flap present on Cornea. The medical

requirement for the post of Enquiry-cum- Reservation Clerk has been specifically mentioned as “*C1 Physically fit in all respects. Visual Standard – Distance Vision – 6/12, 6/18 with or without glasses. Near vision-S.0.6, 0.6 without glasses when reading or close work is required*” in the advertisement vide Annexure A/1. The applicant was not found to be medically fit due to defective eyesight, therefore he was rightly found not to be fit for appointment to the said post. After carefully going through the case laws, as cited by the learned counsel for the applicant, this Tribunal finds that the said cases are not applicable to the facts and circumstances of the present cases.

6. In the above circumstances, this Tribunal find that there has been no illegality committed by the respondents in not giving appointment to the applicant either for the post of Goods Guard or for the post of Enquiry-cum- Reservation Clerk. Accordingly the OA is dismissed being devoid of merit but in the circumstances of the case without any cost.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

(csk)